

HOUSE BILL NO. 623

INTRODUCED BY J. MANGAN, FRITZ, GOLIE, LENHART, MATTHEWS, SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TAX CREDITS FOR AMOUNTS PAID OR INCURRED BY THE EMPLOYER FOR DEPENDENT CARE ASSISTANCE; ALLOWING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID OR INCURRED BY THE EMPLOYER TO ACQUIRE A DAY-CARE FACILITY FOR THE BENEFIT OF THE EMPLOYER'S EMPLOYEES; PROVIDING LIMITATIONS TO THE CREDIT; INCREASING THE TAX CREDIT FOR DEPENDENT CARE ASSISTANCE; EXPANDING THE TAX CREDIT FOR DEPENDENT CARE ASSISTANCE TO INCLUDE AMOUNTS PAID OR INCURRED BY AN EMPLOYER FOR INFORMATION AND REFERRAL SERVICES TO ASSIST EMPLOYEES IN OBTAINING DEPENDENT CARE; AMENDING SECTIONS 15-30-186 AND 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, ~~AND~~ AND A RETROACTIVE APPLICABILITY DATE, ~~AND A TERMINATION DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Credit for day-care facilities.** (1) There is a credit against the taxes otherwise due under this chapter that is allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property so that the property may be used primarily as a day-care facility. Subject to the conditions of this section, the amount of the credit is equal to:

(a) the amount of the day-care facility credit determined under subsection (2); and

(b) any day-care facility tax credit carryforwards.

(2) The credit allowed under subsection (1) is the lesser of:

(a) \$2,500, multiplied by the number of ~~full-time equivalent employees employed by the employer on the property or within sufficient proximity to the property that any dependents of the employees may be cared for in the day-care facility, on any date within the 2 years immediately preceding~~ DEPENDENTS THAT THE DAY-CARE FACILITY IS DESIGNED TO ACCOMMODATE AT the end of the first tax year for which credit is first claimed;

(b) ~~50%~~ 15% of the cost of the acquisition, construction, reconstruction, renovation, or other

1 improvement; or

2 (c) ~~\$100,000~~ \$50,000.

3 (3) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction,
4 renovation, or other improvement to real property that qualify for the credit may be paid or incurred either:

5 (a) to another person to be used to acquire, construct, reconstruct, renovate, or otherwise improve
6 real property that is operated as a day-care facility and with whom the employer contracts to make
7 day-care assistance payments, and the payments are excluded, or partially excluded, under 26 U.S.C. 129
8 from the income of the employee for federal tax purposes; or

9 (b) to acquire, construct, reconstruct, renovate, or otherwise improve real property that is
10 operated by the employer, or a combination of employers, to provide day-care assistance to the employees
11 of the employer under a program or programs, and the program or programs are excluded, or partially
12 excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes.

13 (4) To qualify for the credit allowed under subsection (1), the following conditions apply:

14 (a) The property must be in actual use in Montana as a day-care facility on the last day of the tax
15 year for which the credit OR ANY CARRYFORWARD AMOUNT OF THE CREDIT is claimed.

16 (b) Day-care services assisted by the employer must take place on the property on the last day
17 of the tax year for which the credit OR ANY CARRYFORWARD AMOUNT OF THE CREDIT is claimed.

18 (c) The person operating the day-care facility must hold a current license or registration certificate
19 under Title 52, chapter 2, part 7, on the last day of the tax year for which the credit under subsection (1)
20 is claimed.

21 (d) The day-care facility shall accommodate six or more children.

22 (e) The day-care facility must be placed in operation before January 1, ~~2007~~ 2006.

23 (5) The total amount of the costs upon which the credit allowed under subsection (1) is based and
24 the total amount of the credit must be determined by the employer, subject to rules adopted by the
25 department, during the tax year in which the property acquired, constructed, reconstructed, renovated,
26 or otherwise improved is first placed in operation as a day-care facility.

27 (6) The amount paid or incurred by the employer upon which the credit allowed under subsection
28 (1) is based must be excluded from the income of an employee subject to the limitations provided in 26
29 U.S.C. 129(b).

30 (7) The taxpayer is allowed one-tenth of the total credit determined under subsection (2) in the

1 first tax year in which the taxpayer may claim the credit and one-tenth of the total credit is allowed in each
2 succeeding tax year, not to exceed 9 tax years.

3 (8) ~~IF EXCEPT AS PROVIDED IN SUBSECTIONS (4)(A) AND (4)(B), IF~~ the tax credit allowed under subsection
4 (1) exceeds the taxpayer's liability, the credit may be carried forward to the succeeding tax year or years,
5 except that a carryforward amount is not allowed beyond the period allowed for the credit as provided in
6 subsection (7).

7 (9) The provisions of this section do not affect the computation of depreciation or basis for a
8 day-care facility. However, if the credit allowed under this section is claimed, the amount of any deduction
9 that is allowed or allowable under this chapter for the amounts paid or incurred, or upon which the credit
10 is based, must be reduced by the dollar amount of the credit allowed.

11 (10) The department shall require evidence from the taxpayer that the person operating the
12 day-care facility on the date that the taxpayer's tax year ends is licensed or registered to operate the
13 facility. The evidence must accompany the tax return in which any amount of tax credit allowed under this
14 section is claimed. If the evidence is not furnished, the credit is not allowed for the tax year for which the
15 evidence is not furnished. UPON REQUEST OF THE DEPARTMENT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
16 SERVICES SHALL REPORT TO THE DEPARTMENT ON WHETHER THE DAY-CARE FACILITY WAS OPERATED AS A LICENSED OR
17 REGISTERED DAY-CARE FACILITY ON THE LAST DAY OF THE TAX YEAR OF THE PERSON CLAIMING THE CREDIT.

18 (11) The employer must meet any other requirements or furnish any information to the department
19 that the department requires under rules adopted by the department to carry out the purposes of this
20 section.

21 (12) If the credit allowed under this section is claimed by a small business corporation, as defined
22 in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners, using the same
23 proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

24 (13) For purposes of the credit allowed under subsection (1):

25 (a) the definitions and special rules contained in 26 U.S.C. 129(e) apply to the extent applicable;
26 and

27 (b) "employer" means an employer carrying on a business, trade, occupation, or profession in this
28 state.

29

30 NEW SECTION. **Section 2. Credit for day-care facilities.** There is a credit against the taxes

otherwise due under this chapter allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property to be used primarily as a day-care facility. The credit must be computed in accordance with the provisions of [section 1].

Section 3. Section 15-30-186, MCA, is amended to read:

"15-30-186. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the ~~taxable~~ tax year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of 15-31-131.

(2) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care. The credit must be computed in accordance with the provisions of 15-31-131."

Section 4. Section 15-31-131, MCA, is amended to read:

"15-31-131. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the ~~taxable~~ tax year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, {26 U.S.C. 129(d)(2) through (d)(6)}.

(2) (a) The amount of the credit allowed under subsection (1) is ~~20%~~ 50% ~~25%~~ of the amount paid or incurred by the employer during the ~~taxable~~ tax year, but the credit may not exceed ~~\$1,250~~ \$2,500 ~~\$1,575~~ of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, {26 U.S.C. 21(e)(3) and (e)(4)}.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services

1 provided.

2 (3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes
3 otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year
4 by the employer to provide information and referral services to assist employees of the employer employed
5 within this state to obtain dependent care.

6 (b) The amount of the credit allowed under subsection (3)(a) is equal to 50% 25% of the amount
7 paid or incurred in the tax year.

8 ~~(3)~~(4) An amount paid or incurred during the ~~taxable~~ tax year of an employer in providing
9 dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under
10 subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of
11 the Internal Revenue Code, ~~{26 U.S.C. 129(c)(1) or (c)(2)}.~~

12 ~~(4)~~(5) An amount paid or incurred by an employer to provide dependent care assistance to or on
13 behalf of an employee does not qualify for the credit allowed under subsection (1):

14 (a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

15 (b) if the amount is paid or incurred for services not performed within this state.

16 ~~(5)~~(6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction
17 allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the
18 credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit
19 allowed under this section must be made at the time of filing the tax return.

20 ~~(6)~~(7) The amount upon which the credit allowed under subsection (1) is based may not be
21 included in the gross income of the employee to whom the dependent care assistance is provided.
22 However, the amount excluded from the income of an employee under this section may not exceed the
23 limitations provided in section 129(b) of the Internal Revenue Code, ~~{26 U.S.C. 129(b)}.~~ For purposes of
24 Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided,
25 "wages" does not include any amount excluded under this subsection. Amounts excluded under this
26 subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

27 ~~(7)~~(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in
28 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
29 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward
30 and used in the second succeeding tax year; and likewise through the fifth year succeeding the tax year

1 in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth
2 succeeding tax year.

3 ~~(9)~~(9) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue
4 Code, {26 U.S.C. 1361}, and the taxpayer elects to take tax credit relief, the election may be made on
5 behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's
6 pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the
7 tax credit applies to the corporation as otherwise provided by law.

8 ~~(9)~~(10) For purposes of the credit allowed under subsection (1) or (3):

9 (a) ~~The~~ the definitions and special rules contained in section 129(e) of the Internal Revenue Code,
10 {26 U.S.C. 129(e)}, apply to the extent applicable; and

11 (b) ~~"Employer"~~ "employer" means an employer carrying on a business, trade, occupation, or
12 profession in this state."

13

14 NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as
15 an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply
16 to [section 1].

17 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and
18 the provisions of Title 15, chapter 30, part 1, apply to [section 2].

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20 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

21

22 NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the
23 meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired
24 by an employer and placed in operation after December 31, 2000.

25

26 ~~NEW SECTION. SECTION 8. TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 2005.~~

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